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Supreme Court, U.S.
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No. 10-

IN THE
Supreme Court of the United States

LUCILLE S. WHITE,

Petitioner,

v.

DISTRICT OF COLUMBIA BOARD OF PROFESSIONAL RESPONSIBILITY

Respondent.

On Petition for a Writ of Certiorari To the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

April 20, 2011

Lucille S. White, Pro Se
1401 Mercantile Lane, Ste. 200C
Largo, MD 20774

QUESTIONS PRESENTED

The Fourteenth Amendment to the United States Constitution provides that "No State shall deprive any person of life, liberty or property due process of law without due process of law.[1] The United States Supreme Court in *In re Ruffalo*[2] explicitly recognized an attorney's basic right to procedural due process in a disciplinary proceeding and also recognized that such proceedings are neither criminal nor civil but are rather adversary proceedings of a quasi criminal nature.

On January 20, 2011, the District of Columbia Court of Appeals disbarred Lucille S. White from the practice of law in the District of Columbia. The disbarment results from two disciplinary complaints that DC Office of Bar Counsel filed against her in July 2005 and April 2008. Lucille S. White was denied procedural due process during the proceedings of both complaints and thus, the Order disbarring Lucille S. White was unconstitutional and a direct violation of the Fourteenth Amendment to the United States Constitution.

The questions presented are:

1. Whether the District of Columbia Court of Appeals Disbarment Order deprived Lucille S. White

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[1] U. S. Const. amend. XIV, §1.

[2] In re Ruffalo, 390 U.S. 544, (1968)

of her right to due process because she was not allowed to defend herself against or provide objections to the DC Board of Professional Responsibility Reports and the Hearing Committees' Recommendations and Sanctions.

2. Whether the District of Columbia Court of Appeals Disbarment Order deprived Lucille S. White of her right to Procedural Due Process because she was not given fair notice of the charges against her.

3. Whether the District of Columbia Court of Appeals Disbarment Order violated Lucille S. White's right to Procedural Due Process because the Order was not based on the record.

4. Whether the District of Columbia Court of Appeals violated Lucille S. White's Procedural Due Process Rights because the Board and Bar Counsel was not neutral in this matter.

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INTRODUCTION

Lucille S. White respectfully petition for a writ of certiorari to review the judgment and orders of the District of Columbia Court of Appeals in this manner.

OPINION BELOW

The Parties in this matter include Petitioner Lucille S. White. Respondents are the District of Columbia Board of Professional Responsibility and the District Of Columbia Office of Bar Counsel.

The matter arose when the District of Columbia Court of Appeals ordered that Petitioner Lucille S. White be disbarred. The District of Columbia Court of Appeals further held Lucille S. White shall not be eligible for reinstatement for five years from the effective date of disbarment pursuant D.C. Bar. R. XI, § 16(a). *See In re Lucille Saundra White,* 11 A. 3d 1226 (January 20, 2011). Now this matter is a request for this honorable court to review the Order of Disbarment from the District of Columbia Court of Appeals.

STATEMENT OF JURISDICTION

The Opinion of the District of Columbia Court of Appeals was entered on January 20, 2011 where it Ordered that Lucille S. White be disbarred from practicing law in the District of Columbia. *See Appx.*

A. The jurisdiction of this Court is invoked under 28 U.S. C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides that "no State shall deprive any person of life, liberty, or property, without due process of law." This due process clause is recognized to have a procedural aspect which guarantees that every person is to be accorded certain fundamental procedures or process, if he or she is to be deprived of life, liberty, or property.

The procedural due process required in any case will depend on the nature of the proceeding, the surrounding circumstances, and the interests at stake. As part of the guarantee of procedural due process, the U.S. Supreme Court has ruled that an attorney in a disciplinary matter is entitled to fair notice of the charge against him or her. Therefore, because the United States Supreme Court has concurred that this right exist, adequate notice is one of the few procedural due process components universally recognized among the states in attorney disciplinary matters.

STATEMENT OF THE CASE

On January 20, 2011, a unanimous panel (Senior Judge Belson and Associate Judges Kramer and Oberly) before the District of

Columbia Court of Appeals ordered the disbarment of Lucille Saundra White. *See Appx1A.* The Order was based on two separate reports and recommendations that were filed with the District of Columbia Court of Appeals concerning Lucille S. White, arising from separate matters that occurred during the same period. In its first report, issued on August 20, 2009, the Board recommended that Lucille S. White be suspended for six months and be required to demonstrate fitness as a condition for reinstatement for violating Rule 1.11 of the District of Columbia Rules of Professional Conduct (conflict in successive government and private employment). Lucille S. White filed exceptions to that report and recommendation of the Hearing Committee in its entirety. Bar Counsel excepted to the Board's finding that it had not been proven that Lucille S. White violated Rule 8.4(d) serious interference with the administration of justice). In a second report, as amended on July 28, 2010, the Board recommended that respondent be disbarred for violating Rule 3.4(a) (alteration of evidence); Rule 3.4(b) (falsification of evidence and false testimony); Rule 8.1 (a) false representation in connection with a disciplinary matter); Rule 8.4(b) (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness); Rule 8.4(c) (dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(d) (serious interference with the administration of justice).

The Order further indicated that no brief was filed on behalf of Lucille S. White.

Lucille S. White received the first complaint that is the subject of the Board of Professional Responsibility August 20, 2009 report in July 2005. The Complaint from DC Bar Counsel stated that Lucille S. White was being charged with violation of Rule 1.11 and Rule 8.4(d). However, the allegation relating to Rule 8.4(d) was extremely vague. Lucille S. White was represented by counsel throughout these proceedings. However, after the Hearing Committee rendered its Adverse decision on April 9, 2007 Lucille S. White could not financially afford to retain her former counsel.

Thereafter, Lucille S. White represented herself and filed exceptions and a brief in response to the Hearing Committee Report. Lucille S. White never received a copy of the Board of Professional Responsibility's Report and Recommendation that was filed with the D.C. Court of Appeals. Therefore, upon receipt of the DC Court of Appeal's Show Cause Order, Lucille S. White filed a Motion to vacate the Board's August 20, 2009 findings and recommended sanctions after receipt of DC Court of Appeals Show Cause Order. Lucille S. White argued in her Motion to vacate the Board's August 2, 2009 Report and findings because her due process rights were violated under D.C. Bar XI, §9 since the Board failed to provide her with a copy of its report. Lucille S. White never received any

correspondence from the Court of Appeals as to whether her Motion had been denied or granted. However, in accordance with DC Court of Appeals' Order, it construed White's Motion to vacate the Board's decision as her exceptions and directed Bar Counsel to file a brief and within thirty days after receipt of Bar Counsel's brief, Lucille S. White's brief would be due. Bar Counsel filed its brief on December 21, 2009 and Lucille S. White received Bar Counsel's brief on December 24, 2009. On January 21, 2010, Lucille S. White mailed her responding brief to the DC Court of Appeals and to DC Bar Counsel's office. On March 30, 2010, Lucille S. White retrieved a letter from her mailbox from DC Court of Appeals with a post mark date of March 25, 2010. The envelope contained an Order dated February 4, 2010 and informed White that it had not received her response brief and ordered her to file her brief within 15 days.

On March 31, 2010, White again mailed her response Brief to DC Court of Appeals and informed the Court that she had previously mailed her brief n January 21, 2010 and the prior brief had not been returned and thus, she assumed that it had received her brief.

On April 14, 2007, Respondent received an email from the DC Court of Appeals that requested her to send dates that she would like the Court to avoid in scheduling Case No: 09-BG-1012. On April 22, 2010, Respondent responded with her conflict dates. On August 20, 2010, Respondent

received another email from DC Court of Appeals that advised Respondent that Case No: 09-BG-1012 would be scheduled for oral argument in October 2010 and again requested Respondent to provide any dates that she wished to avoid. Respondent responded to the Court's email on August 22, 2010.

Lucille S. White received the second complaint that is the subject of the Board of Professional Responsibility July 28, 2010 in April 2008. This complaint filed by DC Bar Counsel alleged that Lucille S. White violated Rule 8.4(b) (committed perjury), Rule 8.4(c) (engaged in conducted involving fraud, deceit, misrepresentation and/or dishonesty; and Rule 8.4(d) (engaged in conduct that seriously interfered with the administration of justice. On November 5, 2008 (after the hearing begun in this matter and after Lucille S. White produced her List of Exhibits) Bar Counsel filed a motion for leave to file an amended Petition and Specification of Charges to include additional allegations that Lucille S. White had violated Rule 3.4(a)(altered evidence that she reasonably knew or should have known was or might be the subject of a subpoena; Rule 3.4(b) (falsified evidence) and Rule 8.1(a) (Lucille S. White knowingly made a false statement of fact). Lucille S. White objected to Bar Counsel's Motion for Leave to file Amended Charges based upon her submission of her List of Documents. Hearing Committee Number Nine never indicated whether it denied or granted Bar Counsel's Motion for Leave to Amend the charges against Lucille S. White. Thus, Lucille S. White never answered the Amended Complaint but

filed an Opposition to Bar Counsel's Motion for Leave to Amend its Charges based upon her submission of her List of Documents.

The hearing in the second complaint was held over a period of six days. Again, Lucille S. White represented herself in this matter. Bar Counsel filed its Brief in February 2009. Lucille S. White filed a motion to extend the time to file her brief in February 2009 and thereafter filed her response brief on March 2, 2009.

Lucille S. White never received Hearing Committee Number Nine's Recommendation that she be disbarred. Also, White never received DC Board of Professional Responsibility Amended Report and Recommendation where the Board agreed that Lucille S. White should be disbarred.

REASONS FOR GRANTING THE PETITION

Lucille S. White believes that her due process rights under the 14th Amendment were violated because the DC Board of Professional Responsibility, DC Bar Counsel and the DC Court of Appeals failed to acknowledge Lucille S. White Brief that she mailed and filed on January 21, 2010 and on March 31, 2010 in response to Bar Docket Number 292-04. Lucille S. White further believes that her 14th Amendment Due Process Rights were violated when DC Board of Professional Responsibility failed to acknowledge her brief filed on March 2,

2009 in response to Bar Counsel's brief that was filed in February 2009 relating to Bar Docket Number 169-06. Lucille S. White's Due Process rights were violated because DC Board of Professional Responsibility failed to provide her with notice of its report in both Bar Docket Numbers 292-04 and Bar Docket Number 169-06 and Hearing Committee Number Nine Recommendation.

Lucille S. White further believes that her Due Process Rights were violated because DC Bar Counsel amended charges against her during a disciplinary hearing to include charges of altered evidence, falsified evidence and false statements of fact.

Lucille S. White believes that her Petition should be granted because the Complaint in Bar Docket Number 292-04 was so vague as to the allegation that White's conduct seriously interfered with the administration of justice and this vagueness denied White notice of the underlying charge. Also, in Bar Docket Number 292-04, the DC Board of Professional Responsibility punished Lucille S. White with alleging making false statements in her pleadings even though the Complaint in this matter did not contain a charge for dishonesty.

Lucille S. White's due process rights were also violated when the US District Court for the District of Columbia terminated Lucille S. White's appearance on two matters before the

US District Court without first issuing a show cause order to White.

This Petition should be granted because Bar Counsel was not neutral and detached even though procedural due process guarantees an attorney the right to a decision-maker who is neutral and detached. Petitioner's procedural due process rights were further violated because the DC Court of Appeals Order was not based on the record in the case since the Court failed to acknowledge Lucille S. White's brief and it cited information that was not a part of the record.

I. The District of Columbia Court of Appeals Disbarment Order deprived Lucille S. White of her right to due process because Lucille S. White was not allowed to defend herself against or provide objections to the DC Board of Professional Responsibility Recommendation and Report and the Hearing Committee Recommendations for Sanctions.

Disciplinary proceedings are quasi-criminal in nature and an attorney who is the subject of such proceedings is entitled to procedural due process safeguards. The procedural requirements which apply in attorney disciplinary proceedings are analogous to those of other "contested cases." The burden of proving the charges rests with Bar Counsel and factual findings must be supported by clear and convincing evidence. *In re Burka*, 423 A. 2d

181, 185(D.C. 1980) and *In re Colson*, 412 A.2d 1160, 1164 (D.C. 1979).

In re Ruffalo, 390 U.S. 544, 550, 88 S.Ct. 1222 (1968) held that it is well settled that disciplinary proceedings are quasi-criminal in nature and that an attorney who is the subject of such proceedings is entitled to procedural due process that includes inter alia the opportunity to be heard and opportunity for explanation and defense of the charges.

In accordance with the DC Rules of Professional Responsibility Section 9(a) within 120 days after the conclusion of its hearing, the Hearing Committee shall in every case submit to the Board a report containing its findings and recommendation, together with a record of its proceedings and the briefs of the parties, if any were submitted. From 2006 until July 31, 2008, the hearing committee had 60 days to submit its report to the Board. Section 9 (dc) of the Professional Rules provides that unless the Board dismissed the petition or remanded the case, or unless the matter is concluded by a reprimand or a direction for an informal admonition, the Board shall promptly prepare a report containing its findings and recommendation. The Executive Attorney shall submit the report of the Board, together with the entire record, to the Court and shall serve a copy thereof on the attorney.

The Hearing Committee nor the Board of Responsibility failed to meet any of its deadlines in this disciplinary matter. For example, the Hearing Committee did not render its report until April 9,

2007 which was ten months after the scheduled oral arguments. It appears likewise that the Board of Professional Responsibility did not render its report until August 20, 2009 well over two years after Bar Counsel submitted its reply brief to Lucille S. White's exceptions. Even though the Professional rules does not require a specific time period, the rules does state that the Board should promptly rendered its report. Surely, the Board realized that rending a report two years after the last event regarding the disciplinary matter was highly prejudicial to Lucille S. White. On December 13, 2009, Lucille S. White mailed to the Board of Professional Responsibility, a statement indicating that she had withdrew from all of her litigation matters before the Superior Court for the District of Columbia and that she had informed her clients, and opposing counsel of this withdrawal because she had been suspended from the practice of law in the District of Columbia for six months and pending final action on the Board's report.

Lucille S. White never received the Board's Report from the Board of Professional Responsibility but instead received copies of it from opposing counsels in other matters and other disciplinary entities. The Board on Professional Responsibility failed to comply with Rule XI, Section 9 since it never provided Lucille S. White with a copy of its report containing its' findings and recommendations to Lucille S. White. The Board's recommendation was tantamount to a default judgment because Lucille S. White never received notice or the opportunity to

present her exceptions pursuant to Rule XI, Section 9 (e).

Lucille S. White never received any information regarding the status of her Motion to Vacate the Board's recommendation to suspend her for six months with a fitness requirement. Lucille S. White never received information regarding the status of her motion to stay her suspension pending the appeal of the suspension. On January 21, 2010, Lucille S. White mailed her response to Bar Counsel's brief to the D. C. Court of Appeals and to D. C. Office of Bar Counsel. On March 30, 2010, Lucille S. White retrieved a letter from her mailbox from DC Court of Appeals with a post mark date of March 25, 2010. The envelope contained an Order dated February 4, 2010 and informed Lucille S. White that it had not received her response brief and ordered her to file her brief within 15 days. On March 31, 2010, Lucille S. White again mailed her Response Brief to DC Court of Appeals and informed them that she had previously mailed her brief on January 21, 2010 and the prior brief and not been returned and thus, she assumed that it had received her brief.

On April 14, 2007, Lucille S. White received an email from the DC Court of Appeals that requested her to send dates that she would like the Court to avoid in scheduling Case No: 09-BG-1012. On April 22, 2010, Lucille S. White responded with her conflict dates. On August 20, 2010, Lucille S. White received another email from DC Court of Appeals that advised Lucille S. White that Case No: 09-BG-

1012 would be scheduled for oral argument in October 2010 and again requested Lucille S. White to provide any dates that she wished to avoid. Lucille S. White responded to the Court's email on August 22, 2010.

The DC Court of Appeals never responded to Lucille S. White by email, mail or any other form of communication regarding the date for oral arguments on Docket No: 09-BG-1012.

Lucille S. White mailed a copy of her reply brief to the DC Court of Appeals and to Bar Counsel and the Board of Professional Responsibility on January 21, 2010. Lucille S. White listed her current office address as 1401 Mercantile Lane, Suite 200C, Largo, MD 20774. Lucille S. White's prior postal office address listed as 3540 Crain Highway, No. 107, Bowie, MD 20716 was not effective as of April 4, 2010. Also, Lucille S. White did not receive any forwarding mail from her former office address.

Lucille S. White was informed by the Manager of her former postal office address that he would forward any mail sent to her at the former address to her current address and after April 4, 2010, the UPS store would not accept any mail inter alia certified, register or priority mail address to her since Lucille S. White did not renew her postal box after April 4, 2010. Lucille S. White's mother died in August 2010 and thus, Lucille S. White was in and out of the office from August 23 through October 22, 2010 assisting with her mother's estate. But Lucille S. White's office personnel kept her abreast of any and

all communication and correspondence from all sources. However, Lucille S. White did not receive any further emails, letters or any other correspondence from this Court regarding this matter after August 20, 2010.

On Monday, October 25, 2010, Lucille S. White contacted DC Court of Appeals regarding the schedule for this matter and was informed that this matter was scheduled for oral arguments on October 26, 2010 and that the scheduling notice was mailed to her former address at 3540 Crain Highway, No. 107, Bowie, MD 20716.

Lucille S. White was informed that the Court had not received her brief and that Bar Counsel had filed a Request to waive Oral Arguments in this matter and allow Bar Counsel to simply submit its Brief. Lucille S. White was further informed that on October 26, 2010, Bar Counsel would submit its brief and the Court would take Bar Counsel's request upon advisement. DC Court of Appeals personnel informed Lucille S. White that another matter captioned as DCCA No. 10-BG- 795 had been consolidated with DCCA No. 09-BG-1012 upon request by Bar Counsel and on October 26, 2010, this matter would also be considered under advisement by the Court.

Lucille S. White did not receive notice of the scheduled argument from this Court and the UPS store never informed her or forward any correspondence from this Court or from Bar Counsel. Also, Lucille S. White never received a copy of Bar

Counsel's Request to waive oral argument or a request to consolidate this matter. Lucille S. White did not receive any correspondence regarding the description or nature of DCCA matter No. 10- BG-795.

On October 26, 2011, Lucille S. White Hand-delivered a copy of her Motion to Continue Oral Arguments to the D.C. Court of Appeals and mailed copies of her Motion to DC Bar Counsel and the Board of Professional Responsibility. Also, on October 26, 2011, Lucille S. White mailed her Motion for Leave for the Court of Appeals to accept her Response/Reply Brief that had been mailed to the Court on January 21, 2010 and March 31, 2013 and mailed a copy of her motion to D.C. Office of Bar Counsel and to D.C. Board of Professional Responsibility.

Lucille S. White never received any correspondence regarding her Motion for Leave for the Court of Appeals to accept her Response/Reply Brief but did received notice from the DC Court of Appeals that it had denied her motion to continue Oral Arguments on November 12, 2010. Prior to receiving the District of Columbia Court of Appeals denial of her motion to continue Oral Arguments, Lucille S. White received Bar Counsel's Opposition to Lucille S. White's Motion to Continue on November 1, 2010. On November 2, 2010, Lucille S. White mailed her Reply to Bar Counsel's Opposition to DC Court of Appeals and to DC Office of Bar Counsel. Lucille S. White vehemently denied Bar Counsel's argument inter alia that she received notice from the DC Court of

Appeals that the matter had been consolidated, she had received Notice of the Board's recommendation to disbar her, Lucille S. White failed to file a timely brief in Docket Number 09-BG-1012 and Docket Number 10-BG-795 and other arguments that Bar Counsel presented. Also, Lucille S. White attached a copy of her Response Brief for Docket Number 10-BG-795 that was originally mailed to DC Board of Professional Responsibility and DC Office of Bar Counsel on March 2, 2009. Apparently, the Court of Appeals disregarded Lucille S. White's Reply to Bar Counsel's Opposition to Lucille S. White's Motion to Continue since they did not mention Lucille S. White's Reply in their Order dated November 9, 2010 where it denied Lucille S. White's Motion to Continue Oral Arguments.

Lucille S. White was out of the office and out of town from January 10, 2011 through February 2, 2011. Lucille S. White discovered that the DC Court of Appeals had affirmed the DC Board of Professional Responsibility Recommendation to disbar her via an email received from the US Court of Appeals for the District of Columbia on February 4, 2011. Thereafter, on February 5, 2011 Lucille S. White filed her Motion for Reconsideration of the Court's Order of Disbarment and mailed it to the D.C. Court of Appeals and the DC Board of Professional Responsibility.

Currently, Lucille S. White has not received any response from D.C. Court of Appeals or DC Board of Professional Responsibility regarding her Motion for Reconsideration. It is clear that the Lucille S.

White's procedural due process rights were violated because the DC Court of Appeals nor the DC Board of Professional Responsibility failed to let Ms. White be heard by not acknowledging receipt of Ms. White's briefs and Motions and also failing to serve upon Ms. White, copies of its orders and the Board's Recommendations and Reports.

II. The District of Columbia Court of Appeals Disbarment Order deprived Deprived Lucille S. White of her Right To Procedural Due Process because She was not given fair Notice of the Charges against her.

D.C. Code §11-2503(b) (1981) and DC Board of Professional Rules of Conduct provide that unless convicted of a crime, a member of the bar may not be censured, suspended, or expelled until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of the complaint. *See In the Matter of: Dudley R. Williams*, 464 A.2d 115 (1983). The Court in Committee on Professional Ethics and Conduct v. James D. Wenger, 454 N.W.2d 367 held that allegations of professional misconduct portend severe penalties and thus carry with them substantial procedural due process protections when charges are not lodged against an attorney until the disciplinary proceedings are underway and the respondent has testified, the process may be transformed

from a search for the truth to a trap for the unwary. Therefore, because lawyer disciplinary actions are quasi-criminal in nature, the charge must be known before the proceedings commence.

The DC Court of Appeals Disbarment Order violated Lucille S. White's procedural due process because DC Bar Counsel amended charges against her during a disciplinary hearing to include charges of altered evidence, falsified evidence and false statements of fact.

The Hearing Committee never denied or granted DC Bar Counsel's Motion for leave to amend the charges during the hearing but apparently granted it after the hearing. However, it was too late for Lucille S. White to Answer the complaint at that point The Complaint in Bar Docket Number 292-04 was so vague as to the allegation that White's conduct seriously interfered with the administration of justice and this vagueness denied White notice of the underlying charge. Also, in Bar Docket Number 292-04, the DC Board of Professional Responsibility punished Lucille S. White with alleging for making false statements in her pleadings even though the Complaint in this matter did not contain a charge for dishonesty

III. The District of Columbia Court of Appeals Disbarment Order violated Lucille S. White's right to Procedural Due Process because the Order was not

based on The Record.

Having a decision based on the record in a case and being provided with a statement of reasons for that decisions is often considered a fundamental component of procedural due process. *In re Metzenbaum*, 154 P. 2d 602 (Wash. 1944). The United States Court of Appeals for the Third Circuit in *Martin v. Brown,* 63 F.3d 1252 (3d Cir. 1995) found a due process violation where the order sanctioning an attorney did not specifically relate the attorney's conduct to a theory under which sanctions could be imposed. Likewise, the Court in *Attorney v. Mississippi State Bar Association*, 481 So. 2d 297 (Miss.1985) held as a denial of due process a proposed private reprimand for civil trespass which failed to describe adequately the nature of the offense that the attorney was found guilty of violating.

The DC Board of Professional Responsibility Rules provides that all disciplinary charges should be proven by clear and convincing evidence. D.C Bar R. XI § 7(3) provides that in considering the appropriate order, the court shall accept the findings of fact made by the disciplinary board unless they are unsupported by clear and convincing evidence on the record. *See In re Dwyer*, 399 A.2d 1 (D.C. 1979).

IV. The District of Columbia Court of Appeals violated Lucille S. White's right

Right to Procedural Due Process because DC Board of Professional Responsibility was not neutral in this Matter.

In addition to adequate notice of the charges, procedural due process also guarantees an attorney the right to a decision-maker who is neutral and detached.[1] A lack of neutrality may also be found where a single person or entity serves an amalgamation of simultaneous and conflicting functions. In *In re Robson,* [2] the Supreme Court of Alaska found a due process violation where the Executive Director of the State Bar Association, who also served as bar counsel in the disciplinary proceedings at issue was present during the deliberation of the board responsible for judging the guilt of the attorney. The Court held that a violation existed even though there was "no indication in the case" that the Executive Director took an active part in the deliberations.

DC Bd Rule XI, §17(f) provides thatBar Counsel may file a written request with the Board for permission to communicate information about any disciplinary matter to law enforcement agencies, the Committee on Admissions, the Committee on Unauthorized Practice, the Client's Security Trust Fund, or a state or federal attorney disciplinary agency, board, or committee that has a legitimate interest in such matter. Permission to communicate such

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[1] *See Ward v City of Monroeville*, 409U S. 57 (1972)
[2] 575 P 2d 771 (Alaska 1978)

information may be granted, in writing, by the Chairperson of the Board or the Chairperson's designated Board member upon good cause shown and subject to any limitations or conditions the Board may impose, including appropriate protections of confidentiality.

In this matter, a case manager with the Board of Professional Responsibility returned a Document that Respondent had mailed to the Hearing Committee on the last day that the Hearing Committee allowed for documents to be submitted. Instead of allowing the Hearing Committee to make the decision to accept or reject the document the Board unilaterally returned the document to Lucille S. White.

During the investigation and hearing of this matter, Bar Counsel interviewed Lucille S. White's witness prior to the hearing and even attempted to interview Lucille S. White's former clients that were not parties to this matter. Also, Bar Counsel indicated to a Maryland State Prosecutor that Lucille S. White had been charged with dishonesty, falsification of documents and false testimony even though neither the Hearing Committee nor the Board had charged White with these allegations. This communication of false information caused the Maryland Prosecutor to deny White's complaint against an individual who attacked her in her home, made false allegations her and caused White to be arrested, imprisoned and charged with Second Degree Assault and False

Imprisonment. Bar Counsel also told one of White's clients that a staff person from the Board's office attended the trial held against White for the second degree assault and false imprisonment. Bar Counsel further stated to White's client that even though White was found not guilty of all the charges, White was still guilty in her eyesight because she found White to be dishonest and untrustworthy in all aspects of her life.

Bar Counsel further communicated to other attorneys, Disciplinary Boards, other Courts and Lucille S. White's witnesses that the Board had found White guilty of several ethical violations. Bar Counsel communicated this information even though the Board had not found her guilty of dishonesty, falsifying evidence or the crime of perjury. Also, Bar Counsel never produce any written request that was authorized by the Board to communicate this information prior to the Board's Rulings.

CONCLUSION

Disbarment is designed to protect the public is a punishment or penalty imposed on the lawyer. The lawyer is entitled to procedural due process which includes fair notice of the charges, the opportunity to be heard, the right to have a decision based upon the record, the right to be served with the decisions of the hearing committees and the Board, the right to present

her briefs and other documents in response to Committee and Board reports and the right to a decision-maker who is neutral and detached. *See In re Oliver*, 333 U.S. 257, *Randall v. Brigham*, 7 Wall 523, and *Selling v. Radford, 243 U.S. 46.* Per the discussion above, Lucille White was denied these procedural due process rights and thus, her right to due process under the 14th Amendment of the Constitution was denied. Therefore, Lucille S. White's Petition for Writ of Certiorari should be granted.

Respectfully submitted,

/s/ Lucille S. White

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DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 09-BG-

1012 & 10-

BG-795 IN RE

LUCILLE

SAUNDRA

WHITE,

RESPONDENT.

A Member of the Bar of the
District of Columbia Court of Appeals
(Bar Registration No. 463929)

On Report and Recommendation of the
Board on Professional Responsibility
(BDN 292-04) (BDN 169-06)

(Submitted October 26,2010 - Decided January 20, 2011)

No brief was filed on behalf of respondent.

Wallace E. Shipp, Jr., Bar Counsel, and

Judith Hetherton, Senior Assistant Bar Counsel, and *Julia L. Porter*, Senior Assistant Bar Counsel, were on the brief for the Office of Bar Counsel.

Before KRAMER and OBERLY, *Associate Judges*, and BELSON, *Senior Judge*.

PERCURIAM: The Board on Professional Responsibility has filed two separate reports and recommendations with this court concerning respondent, Lucille Saundra White, arising from separate matters that occurred during the same period. In its first report, issued on August 20, 2009, the Board recommended that respondent be suspended for six months and be required to demonstrate fitness as a condition for reinstatement for violating Rule 1.11 of the District of Columbia Rules of Professional Conduct (conflict in successive government and private employment). Respondent filed exception to that report and recommendation of the Board in its entirety. Bar Counsel excepts to

the Board's finding that it had not been proved that White violated Rule 8.4(d)

(serious interference with the administration of justice). In a second report, as amended on July 28, 2010, the Board recommended that respondent be disbarred for violating Rule 3.4 (a) (alteration of evidence); Rule 3.4 (b) (falsification of evidence and false testimony); Rule 8.1 (a) (false representation in connection with a disciplinary matter); Rule 8.4 (b) (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness); Rule 8.4 (c) (dishonesty, fraud, deceit or misrepresentation); and Rule 8.4 (d) (serious interference with the administration of justice). Neither respondent nor Bar Counsel filed an exception with respect to that report and recommendation.

The two reports of the Board have been

consolidated for review by this court. We adopt the Board's findings and its recommended sanction in the second matter referred to above and set forth in the July 28, 2010, Amended Report. We also adopt the Board's findings and recommended sanctions in the August 20,2009, Report, other than the Board's determination that Bar Counsel had not proven that respondent violated Rule 8.4 (d). Respondent has filed no briefs with this court in either matter.' We order that respondent

' On November 9, 2009, following the issuance of an order to show cause to which respondent never responded, we suspended respondent from the practice of law pursuant to D.C. Bar R. XI, § 9 (g) and construed respondent's September 28,2009 motion to vacate the report and recommendation of the Board as her exceptions. We directed Bar Counsel to file its brief first, and respondent to file her brief within thirty days thereafter. Bar Counsel filed its brief on December 21, 2009. On February 4, 2010, the court still had not received a brief from respondent and ordered that respondent file within fifteen days of the date of that order. On March 16, 2010, having considered that respondent had still not filed a brief, we ordered

(continued...)Lucille Saundra White be disbarred.

I.

Standard of Review

In a disciplinary case, this court accepts the Board's findings of fact "unless they are unsupported by substantial evidence of record." D.C. Bar R. XI, § 9 (g); *In re Pierson,* 690 A.2d 941, 946-47 (D.C. 1997). This court reviews the Board's legal conclusions *de novo. In re Fair,* 780 A.2d 1106, 1110-11 (D.C. 2001). We shall adopt the recommended disposition of the Board "'unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted.'" *In re Cleaver-Bascombe,* 986 A.2d 1191,1194 (D.C. 2010) (quoting

D.C. Bar R. XI, § 9 (h) (2006)). The Board, in turn, is required to accept the factual findings of the hearing committee that are supported by substantial evidence in the record, viewed in its entirety. *In re Micheel,* 610 A.2d 231, 234 (D.C. 1992). "However, the Board owes no deference to the hearing committee's determination of'ultimate facts,' which are really conclusions of law." *Id.*

'(...continued)
that the matter be scheduled on the regular calendar on the report and recommendation of the Board and the Bar Counsel's brief. Respondent asserted in a belated request for oral argument filed on the day the matters were scheduled for submission to the court that she had filed briefs in both matters. No such briefs are present in the record of the court or of Bar Counsel.

II.

August 20, 2009 Report

On August 20, 2009, the Board on Professional Responsibility concluded that respondent violated D.C. Bar Rule 1.11 (conflict in successive government and private employment), stemming from respondent's representation of Ms. Gladys Thomas. During respondent's tenure as head of the investigating unit at the District of Columbia Office of Human Rights ("OHR"), she had supervised the investigation of an age discrimination complaint filed by Ms. Thomas arising out of her discharge from a position with the Department of Consumer and Regulatory Affairs. The investigating agent had provided respondent with a draft Letter of Determination

("LOD") concerning Ms. Thomas's complaint in July 2002; OHR's final LOD advised Ms. Thomas that there was no probable cause to support her complaint.

Ms. Thomas pursued her age discrimination allegation by filing suit in the United States District Court for the District of Columbia on January 9, 2003, the same month that respondent was terminated from OHR. In an e-mail between Ms. Thomas's counsel, Ms. Janet Cooper, and respondent dated January 6, 2004, the two discussed entering a "co-counsel" relationship for Ms. Thomas's suit. In mid-December 2003, respondent had telephoned an unidentified representative at the D.C. Bar Ethics Counsel to inquire about

engaging in this representation; however respondent provided only "a partial description of the relevant facts" during that call and specifically omitted her involvement with the Thomas case while she was at OHR. Thereafter, respondent participated in reviewing and editing court filings, including a draft motion on behalf of Ms. Thomas, and attended a deposition of a witness in the case, Bernard Ferguson. Following respondent's attendance at the Ferguson deposition on January 13, 2004, Michael Bruckheim, the attorney representing the District, contacted Ms. Cooper to complain about respondent's involvement as a violation of Rule 1.11; he filed a motion to disqualify respondent and Ms. Cooper after Ms. Cooper refused to withdraw. Ms. Cooper and respondent each filed an affidavit asserting that respondent had not played a substantive role concerning Ms. Thomas's case while

at OHR.

On June 29, 2004, U.S. District Court Judge Royce C. Lamberth granted the motion to disqualify both respondent and Ms. Cooper, on the basis that respondent was the supervisor overseeing the investigation of Ms. Thomas's claim while she was at OHR. Bar Counsel filed charges against respondent on July 6,2005, alleging that she had violated Rule 1.11 and Rule 8.4 (d) (serious interference with the administration of justice), and evidentiary hearings followed from December 2005 through April 2006.

On April 9, 2007, Hearing Committee Number Five found that respondent's representation of Ms. Thomas was adverse to the District of Columbia government, and was on a

matter in which respondent had been personally and substantially involved when she worked in OHR. However, the Committee concluded that Bar Counsel had not proven a violation of Rule 8.4 (d).

Bar Counsel filed a brief in support of its exception to the conclusion regarding Rule 8.4 (d) on June 15, 2007. Respondent filed her exceptions to Hearing Committee Number Five's report on June 21, 2007, which was well past an extended due date of May 24, 2007. Oral argument was scheduled on June 21, 2007, but respondent failed to appear. On July 2, 2007, the Board issued an order accepting respondent's lodged brief for filing but denied her request to reschedule oral argument.

On August 20,2009, the Board issued a report agreeing with the Hearing Committee that

respondent had violated Rule 1.11 and that Bar Counsel had not proven a violation of Rule 8.4 (d), and recommended that respondent be suspended for six months and be required to demonstrate fitness as a condition of reinstatement. On November 9, 2009, this court suspended respondent pending final action on the Board's report. On December 21, 2009, Bar Counsel filed with this court a Brief in Support of its Limited Exception to the Board on Professional Responsibility's Failure to Find that Respondent also Violated Rule 8.4 (d). In its brief, Bar Counsel, like the Board, recommends that respondent be suspended for six months for these violations.

> We adopt the Board's conclusion as to the Rule 1.11 violation, but

disagree with the Board's determination concerning

Rule 8.4 (d). We incorporate the Board's report of August 20, 2009, herein as set forth in Appendix A.[2]

To establish a violation of Rule 8.4 (d), Bar Counsel must show (1) that the attorney acted improperly in that the attorney either'" [took] improper action or fail[ed] to take action when . . . he or she should [have] act[ed]'; (2) that the conduct involved 'bear[s] directly upon the judicial process *(i.e.,* the "administration of justice") with respect to an identifiable case or tribunal'; and (3) that the conduct 'taint[ed] the judicial process in more than a *de minimis* way,' meaning that it 'at least potentially impact[ed] upon the process to a serious and adverse degree.'" *In re Owusu,* 886 A.2d 536, 541 (D.C. 2005) (quoting *In re Hopkins,* 677 A.2d 55, 60-61 (D.C. 1996)) (alternations in original).

The Board concluded that respondent's actions did not clearly satisfy these three criteria. It reasoned that though Judge Lamberth disqualified respondent, a "disqualification motion, without more, does not support a finding that the conduct was a serious interference with the administration of justice." *See In re Hallmark*, 831 A.2d 366, 375 (D.C. 2003) (requiring more egregious conduct than burden on court's administrative process). The Board also noted that Bar Counsel was unable to cite any case in which a Rule 1.11 violation standing alone supported a Rule 8.4 (d) violation. It was the Board's view that it would have

Although we do not adopt the Board's conclusion as to whether a Rule 8.4 (d) violation was proven, we incorporate the Board's Rule 8.4 (d) analysis herein at Appendix, A,23-26. "a pernicious effect on the administration of justice and the

representation of individual clients [] [i]f the unsuccessful defense of a motion to disqualify were held to constitute sanctionable misconduct...." The Board reasoned that such a holding might lead "lawyers with meritorious defenses [to] . . . withdraw unnecessarily, rather than risk exposure to disciplinary charges."

Board member Mercuric, joined by member Bolze, dissented from the Board's conclusions insofar as they pertained to Rule 8.4 (d). He stated that the Board's conclusion fails to recognize that respondent's conduct met the test for impropriety under the third of the three *Hopkins* criteria, that "the attorney's conduct must taint the judicial process in more than a *de minimis* way, that is, *at least potentially* impact upon the process to a serious and adverse degree. *Hopkins*, 677 A.2d at

61 (emphasis added)."

The dissenting statement took note of the Hearing Committee's finding that respondent "undertook to act as co-counsel with Ms. Cooper in representing G. Thomas in her federal court suit." Respondent thereby "showed a willingness and an ability ... to impart OHR confidential information to Cooper and Thomas," and "actually gave them her recollection about Thomas's OHR investigation file and a tape recording of her interview of the OHR investigator in Thomas's case who investigated, or failed to investigate, matters Thomas complained about." This and other related conduct, the statement concluded, "threatened to give Thomas and Cooper a significant and unfair advantage over their adversaries in Thomas's federal action, and thus posed, at the very least, a ""potential impact

upon the process [in that lawsuit] to a serious and adverse degree.'"

Bar Counsel, in urging this court to conclude that respondent violated Rule 8.4 (d), cites the dissenting statement of the two Board members, and also notes that Judge Lamberth expressly found that respondent's participation in the deposition of witness Ferguson "'tainted'" the federal court proceedings, leading the court in its words to strike the deposition "'because of the critical interests at stake with respect to the integrity of the judicial system.'" (Brief for Bar Counsel at 14, n. 12 (quoting Bar Exhibit 8q at 12-13)). Bar Counsel points out that respondent's misconduct with respect to the federal court action was far more extensive than the evidence brought before Judge Lamberth in connection with the Ferguson deposition, and to

make that point refers to some of the misbehavior discussed in the language quoted above from the Board dissent. Bar Counsel also points to respondent's reviewing and editing co-counsel's brief in the federal action, which argued that respondent's former employer, OHR, improperly handled the Ms. Thomas matter that respondent had supervised. *(Id.* at 28.).

Bar Counsel's position finds support in *In re Evans*, 902 A.2d 56, 58 (D.C. 2006), where this court found a Rule 8.4 (d) violation based on the conflict arising from counsel's dual roles in a single transaction. Respondent there had a conflict of interest that arose from his dual roles as the owner of a title company that handled real estate closings and as a lawyer whose

practice included both probate and real estate

matters. He undertook to represent a borrower in order to secure title for her to real property that belonged to the unprobated estate of her deceased mother-in-law, and thereby allow her to go to closing before respondent's title company. The conflict in *Evans* was less problematic than the conflict involved in the instant case because, as noted in *Evans,* respondent there could have attempted to secure a waiver of the conflict, something that respondent here doubtless could not achieve.

While we afford great respect to a conclusion of the Board as to whether a disciplinary rule has been violated, we are not persuaded by its reasoning in this instance. Nor do we share its concern that a ruling that respondent's conduct at issue violated Rule 8.4 (d) here would have a "pernicious effect" on the administration of justice and the representation

of individual clients. What is before us is not simply a matter involving an attorney who unsuccessfully resisted a motion to disqualify. We consider not only the outcome of the disqualification motion, but also the nature of the misconduct that led to the filing of the motion to disqualify and the related misconduct that was not even before the judge who found that the respondent's misconduct had "tainted" the proceedings.

We conclude that the evidence clearly and convincingly supports the conclusion that respondent violated Rule 8.4 (d) with respect to her conduct during the Thomas litigation in federal court. The actions Judge Lamberth concluded that he was required to take can be said to have affected the judicial process in more than a *de minimis* manner. The entire litigation was disrupted and delayed

while the District Court dealt with the motion to disqualify Ms. Cooper and respondent. Judge Lamberth concluded that respondent's participation had tainted the proceedings and struck the deposition of Bernard Ferguson because of respondent's presence. Ms. Cooper died while Ms. Thomas's Motion to Reconsider was still pending; nevertheless, Judge Lamberth concluded that respondent could not reenter the litigation because of her taint.

Of still greater significance to the federal court litigation were the related actions cited above that respondent took to share her knowledge of the proceeding before OHR, her former employer, with co-counsel and client, the plaintiff, that threatened to give the plaintiff in the federal action an unfair advantage over her adversary and presented at

least a "potential impact upon its process to a serious and adverse degree."

For the foregoing reasons, this court finds that respondent's conduct tainted the judicial process in more than a *de minimis* way and, contrary to the Board's recommendation, concludes that respondent violated Rule 8.4 (d).

III.

July 20, 2010 Amended Report

The charges dealt with in the Board's July 28, 2010, Amended Report arose from respondent's conduct in connection with "whistleblower" claims she alleged against her employer, OHR, and subsequent dealings with the Office of Inspector

General ("OIG") and the Council of the District of Columbia in connection with those allegations. We adopt the Board's report (incorporated herein as Appendix B), which sets forth and adopts the Hearing Committee's detailed findings of fact concerning respondent's misconduct, and offer a short summary of those findings of fact here.

Respondent's misconduct arose from a complex series of events, beginning with her hiring at OHR in December 2000. As head of the investigating unit, respondent was partially responsible for the contracting duties of the office. In June 2001, respondent's supervisor began efforts to terminate her employment for performance reasons.

In an apparent attempt to head off her

termination, respondent filed a "whistleblower" complaint with OIG on July 20, 2001, regarding an allegedly improper contract between OHR and a private attorney, Vere Plummer. In the sequence of events that followed, respondent engaged in an elaborate and extraordinary series of actions to shore up her allegations of improper contracting by OHR by furnishing documents and other evidence to OIG investigating agents and even to D.C. Council member Vincent Orange. An ensuing investigation by OIG demonstrated that respondent had manipulated and fabricated documents that she presented before the Council and had testified falsely before the Council, purporting to recount events that actually never took place. Bar Counsel initiated his own investigation of respondent and brought the charges now before us. Hearing Committee Number Nine concluded that three documents that

respondent introduced as evidence to the Committee were either altered versions of other documents, or of doubtful authenticity. Based on these conclusions, Hearing Committee Number Nine agreed with Bar Counsel that respondent had violated Rules 3.4 (a), 3.4 (b), 8.1 (a) , 8.4 (b), 8.4 (c), and 8.4 (d). The Board subsequently adopted the Hearing Committee's report and recommended disbarment.

We adopt the Board's report, incorporated herein as Appendix B. We accept the conclusion that it demonstrates by clear and convincing evidence that respondent violated Rules 3.4 (a), 3.4 (b), 8.1 (a), 8.4 (b), 8.4 (c), and 8.4 (d). We turn to a discussion of the appropriate sanctions.

IV

Sanctions

The Board on Professional Responsibility's proposed sanction comes to this court with a strong presumption in favor of its imposition. *In re Goffe*, 641 A.2d 458, 463 (D.C. 1994). Where this court has concluded that the attorney's conduct falls into a category of dishonesty of a flagrant kind it has held disbarment to be the appropriate sanction. *In re Cleaver-Bascombe*, 986 A.2d at 1199. Whether the recommended disciplinary action is appropriate depends on a review of the respondent's violations in light of relevant factors, including "the nature of the violation," "the mitigating and aggravating circumstances," "the need to protect the public, the courts, and the legal profession," and "the moral

fitness of the attorney." *Id.* at 1195 (internal quotation marks omitted).

In evaluating these factors, the Board's report as amended on July 28, 2010, focuses on the seriousness of the conduct, the prior offense (referring to the August 20, 2009, report dealing with the representation of Ms. Thomas), the prejudice it caused to the reputation of OIG employees, and especially the respondent's attitude throughout the proceedings. Regarding respondent's attitude during its investigations, the Board emphasized that "[a]t no point did [r]espondent express any hint of regret or remorse for anything that has happened since 2001 or any acknowledgment of wrongdoing." It also noted her "erratic" behavior,

citing her accusation that the Hearing Committee chairman was biased against her. The Board also

considered the impact of the prior disciplinary proceedings referring to the recommended sanctions for respondent's misconduct in connection with her representation of Ms. Thomas - as further evidence of inconsistencies in her testimony before the Board. Based on these considerations, the Board concluded that there are no mitigating factors and that disbarment is warranted based on the severity of the misconduct.

The Board's recommendation of disbarment is supported by *In re Cleaver-Bascombe*, where this court disbarred an attorney for submitting fraudulent vouchers for payment under the Criminal Justice Act, even though there the Board had recommended only a two-year suspension. 986 A.2d at 1191. We agree with the Board that here, respondent's actions are even more egregious than Cleaver-Bascombe's because respondent engaged in several episodes of

misconduct, and put at risk more careers than just her own. The conduct in question is indeed serious: the record reflects that respondent made false accusations to the Council of the District of Columbia, fabricated evidence to support those accusations, and falsely recounted events that never occurred. Moreover, respondent has not presented a substantive defense to these allegations. The two separate cases of misconduct in question here demonstrate that respondent "lacks the moral fitness to remain a member of the legal profession." *Id.* at 1200-01. Therefore, disbarment is the proper sanction in this instance in order to protect the public and the courts, to maintain the integrity of the profession, and to serve as a deterrent. *In re Uchendu,* 812 A.2d 933, 941 (D.C. 2002). It is

ORDERED that Lucille Saundra White is disbarred from the practice of law in the District of Columbia, effective thirty days from the date of this opinion. *See* D.C. Bar R. XI, § 14 (f). Respondent shall not be eligible for reinstatement for five years from the effective date of disbarment, pursuant to D.C. Bar R. XI, § 16 (a).

So ordered.